

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 5123
Dwight D. Sutherland, Jr.)
)

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by David Plouffe, as executive director of the Democratic Congressional Campaign Committee. The Federal Election Commission ("Commission") found reason to believe that Dwight D. Sutherland, Jr. ("Respondent") violated 2 U.S.C. §§ 434(c)(2) and 441d(a)(3).

NOW, THEREFORE, the Commission and the Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Dwight D. Sutherland, Jr. is a person within the meaning of 2 U.S.C. § 431(11).
2. The Federal Election Campaign Act of 1971, as amended ("the Act"), defines "expenditure" as "any purchase, payment, distribution, loan, advance, deposit, or gift of money

1 or anything of value, made by any person for the purpose of influencing any election for Federal
2 office." 2 U.S.C. § 431(9)(A)(i).

3 3. An independent expenditure is an expenditure by a person expressly
4 advocating the election or defeat of a clearly identified candidate, "which is made without
5 cooperation or consultation with any candidate, or any authorized committee or agent of such
6 candidate, and which is not made in concert with, or at the request or suggestion of, any
7 candidate, or any authorized committee or agent of such candidate." 2 U.S.C. § 431(17). The
8 term "clearly identified" means, *inter alia*, that the name of the candidate involved appears.
9 2 U.S.C. § 431(18)(A). In pertinent part, 11 C.F.R. § 100.22(a) defines "express advocacy" as
10 any communication that "[u]ses phrases such as 'vote for the President,' 're-elect your
11 Congressman,' 'support the Democratic nominee,' 'cast your ballot for the Republican
12 challenger for U.S. Senate in Georgia,' 'Smith for Congress,' [or] 'Bill McKay in '94'"

13 4. The Act requires that every person (other than a political committee) who
14 makes independent expenditures in an aggregate amount or value in excess of \$250 during a
15 calendar year file a statement containing the information required under 2 U.S.C. § 434(c).
16 Pursuant to 2 U.S.C. § 434(a)(2)(A)(i), pre-election reports must be filed no later than the 12th
17 day before any election, and must be complete as of the 20th day before the election.

18 5. Whenever any person makes an expenditure for the purpose of financing a
19 communication expressly advocating the election or defeat of a clearly identified candidate and
20 the expenditure is not authorized by a candidate, an authorized political committee of a
21 candidate, or its agents, the communication must clearly state the name of the person who paid
22 for the communication and state that the communication is not authorized by any candidate or
23 candidate's committee. 2 U.S.C. § 441d(a)(3).

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1 6. On October 17, 2000, Mr. Sutherland made an independent expenditure of
2 \$25,750 in connection with radio advertising on WDAF-AM and KMBZ-AM. The radio
3 advertisement ended as follows: "Vote for Phill Kline, the Republican Candidate for the United
4 States House of Representatives in Kansas' Third District. Paid for by Dwight Sutherland, Jr."
5 The election in which Mr. Kline was a candidate occurred on November 7, 2000.

6 7. Mr. Sutherland's independent expenditure report was due on October 26,
7 2000, because the expenditure occurred more than twenty days before the election.
8 Mr. Sutherland did not file his independent expenditure report until November 22, 2000.

9 V. 1. Respondent failed to timely file his independent expenditure report for \$25,750
10 in radio advertising, in violation of 2 U.S.C. § 434(c)(2). Respondent will cease and desist from
11 violating 2 U.S.C. § 434(c)(2).

12 2. Respondent failed to state that the radio advertisement was not authorized by
13 any candidate or candidate's committee, in violation of 2 U.S.C. § 441d(a)(3). Respondent will
14 cease and desist from violating 2 U.S.C. § 441d(a)(3).

15 VI. Respondent will pay a civil penalty to the Federal Election Commission in the
16 amount of Four Thousand Eight Hundred Seventy Five dollars (\$4,875.00), pursuant to 2 U.S.C.
17 § 437g(a)(5)(A).

18 VII. The Commission, on request of anyone filing a complaint under 2 U.S.C.
19 § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance
20 with this agreement. If the Commission believes that this agreement, or any requirement thereof,
21 has been violated, it may institute a civil action for relief in the United States District Court for
22 the District of Columbia.

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VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence H. Norton
General Counsel

BY:

Rhonda J. Vosdingh
Rhonda J. Vosdingh
Associate General Counsel
for Enforcement

4/10/03
Date

FOR THE RESPONDENT:

Dwight D. Sutter
(Name)
(Position)

March 21, 2003
Date